



Rep. Joseph M. Lyons

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09500SB2513ham003

LRB095 18312 WGH 53987 a

1 AMENDMENT TO SENATE BILL 2513

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2513, AS AMENDED,  
3 with reference to page and line numbers of House Amendment No.  
4 2, on page 2, by inserting after line 9 the following:

5 "Section 7. The Home Equity Assurance Act is amended by  
6 changing Sections 3, 7, and 8 as follows:

7 (65 ILCS 95/3) (from Ch. 24, par. 1603)

8 Sec. 3. Definitions. For the purposes of this Act:

9 (a) "Bona fide offer" means an offer made in good faith and  
10 for a valuable consideration to purchase a qualified residence  
11 at a price that in the opinion of the governing commission is  
12 reasonable given current market conditions.

13 (b) "Certificate of participation" means the duly  
14 notarized document of membership in a program, signed by the  
15 qualified applicant and by an authorized representative of the  
16 governing commission, which specifies the location and

1 description of the guaranteed residence, its guaranteed value,  
2 the registration date, and which has attached a program  
3 appraisal for the guaranteed residence.

4 (c) "Community organization" means a not-for-profit  
5 organization which has been registered with this State for at  
6 least 5 years as a not-for-profit organization, which qualifies  
7 for tax exempt status under Section 501 (c) (3) or 501 (c) (4)  
8 of the United States Internal Revenue Code of 1986, as now or  
9 hereafter amended, which continuously maintains an office or  
10 business location within the territory of a program together  
11 with a current listed telephone number, and whose members  
12 reside within the territory of a program.

13 (d) "Eligible applicant" means a natural person who is the  
14 owner of a qualified residence within the territory of a  
15 program who continuously occupies or has a family member who  
16 occupies such qualified residence as the principal place of  
17 residence.

18 (e) "Family member" means a spouse, child, stepchild,  
19 parent, grandparent, brother, sister, or any such relations of  
20 the spouse of the member.

21 (f) "Governing commission" means the 9 member (or 18 member  
22 in the case of a merged program) governing body which is  
23 authorized by voter approval of the creation of a home equity  
24 program (or merger of programs) as provided in this Act and  
25 which is appointed by the mayor of the municipality in which  
26 the program has been approved with the approval of the city

1 council, 7 (or 14 in the case of a merged program) of whom  
2 shall be appointed from a list or lists of nominees submitted  
3 by a community organization or community organizations as  
4 defined in this Act.

5 (g) "Gross selling value" means the total consideration to  
6 be paid for the purchase of a guaranteed residence, and shall  
7 include any amount that the buyer or prospective buyer agrees  
8 to assume on behalf of a member, including broker commissions,  
9 points, legal fees, personal financing, or other items of value  
10 involved in the sale.

11 (h) "Guarantee fund" means the funds collected under the  
12 provisions of this Act for the purpose of guaranteeing the  
13 property values of members within the territory of a program.

14 (i) "Guaranteed residence" means a qualified residence for  
15 which a certificate of participation has been issued, which is  
16 occupied continuously as the place of legal residence by the  
17 member or a family member, which is described in the  
18 certificate of participation, and which is entitled to coverage  
19 under this Act.

20 (j) "Guaranteed value" means the appraised valuation based  
21 upon a standard of current fair market value as of the  
22 registration date on the qualified residence as determined by a  
23 program appraiser pursuant to accepted professional appraisal  
24 standards and which is authorized by the commission for the  
25 registration date. The guaranteed value shall be used solely by  
26 the commission for the purpose of administering the program and

1 shall remain confidential.

2 (k) "Member" means the owner of a guaranteed residence.

3 (l) "Owner" means a natural person who is the legal  
4 titleholder or who is the beneficiary of a trust which is the  
5 legal titleholder.

6 (m) "Physical perils" means physical occurrences such as,  
7 but not limited to, fire, windstorm, hail, nuclear explosion or  
8 seepage, war, insurrection, wear and tear, cracking, settling,  
9 vermin, rodents, insects, vandalism, pollution or  
10 contamination, and all such related occurrences or acts of God.

11 (n) "Program" means the guaranteed home equity program  
12 governed by a specific home equity commission.

13 (o) "Program appraisal" means a real estate appraisal  
14 conducted by a program appraiser for the purpose of  
15 establishing the guaranteed value of a qualified residence  
16 under a program and providing a general description of the  
17 qualified residence. The program appraisal shall be used solely  
18 by the governing commission for the purpose of administering  
19 the program and shall remain confidential.

20 (p) "Program appraiser" means a real estate appraiser who  
21 meets the professional standards established by the American  
22 Institute of Real Estate Appraisers (AIREA), the National  
23 Association of Independent Fee Appraisers (NAIFA), the  
24 National Society of Real Estate Appraisers (NSREA) or the  
25 American Society of Appraisers (ASA) and whose name is  
26 submitted to the governing commission by the appraiser to

1 conduct program appraisals under the provisions of a program.

2 (q) "Program guidelines" means those policies, rules,  
3 regulations, and bylaws established from time to time by the  
4 governing commission to explain, clarify, or modify the program  
5 in order to fulfill its goals and objectives.

6 (r) "Qualified residence" means a building: (1) located in  
7 the territory of a program having at least one, but not more  
8 than 6, dwelling units; (2) classified by county ordinance as  
9 residential and assessed for property tax purposes; and (3)  
10 with at least one dwelling unit continuously occupied as the  
11 principal legal residence of a member or family member.

12 (s) "Registration date" means the date of receipt by the  
13 governing commission of the registration fee and a completed  
14 application of a qualified applicant for participation in a  
15 program.

16 (t) "Registration fee" means the fee which is established  
17 by the governing commission to defray the cost of a program  
18 appraisal on a qualified residence.

19 (Source: P.A. 86-684.)

20 (65 ILCS 95/7) (from Ch. 24, par. 1607)

21 Sec. 7. Guarantee. A member or the estate of a member  
22 participating in a program created under the provisions of this  
23 Act shall be paid 100% of the difference between the guaranteed  
24 value as determined by the program and the gross selling value  
25 as determined in Section 8 of this Act if the guaranteed value

1 is greater than the gross selling value. The guarantee provided  
2 by the program shall only apply to sales made 5 years or more  
3 after the date of issuance of the certificate of participation  
4 and shall be provided subject to all of the terms, conditions,  
5 and stipulations of the program. The guarantee provided by the  
6 program shall extend only to those who qualified as members at  
7 the time of their application, or to the estates of members;  
8 provided that the estate applies within 2 years of the member's  
9 death or immediately upon completion of the fifth year after  
10 the date of issuance of the certificate of participation,  
11 whichever is later. A member shall receive the guarantee  
12 provided by the program only if the member has accepted a bona  
13 fide offer and the sale of the guaranteed residence has closed.

14 A member of a program agrees to abide by all conditions,  
15 stipulations, and provisions of a program and shall not be  
16 eligible for protection and shall not receive the guarantee  
17 unless all such conditions, stipulations and provisions have  
18 been met. Any member failing to abide by the conditions,  
19 stipulations and provisions of a program or who engages in  
20 fraud, misrepresentation, or concealment in any process  
21 involving a program forfeits both the registration fee and any  
22 claim to the guarantee.

23 (Source: P.A. 85-1044.)

24 (65 ILCS 95/8) (from Ch. 24, par. 1608)

25 Sec. 8. Procedures for obtaining benefits. (a) In order to

1 be eligible for payment under a program created pursuant to  
2 this Act, a member must follow the program guidelines adopted  
3 by the governing commission as well as the procedures set forth  
4 in this Section.

5 (b) A member must file a "Notice of Intent to Sell" with  
6 the governing commission in accordance with program guidelines  
7 if and when the member intends to place the guaranteed  
8 residence on the market for sale. Upon receipt of a "Notice of  
9 Intent to Sell", the governing commission shall provide the  
10 member with a copy of this Section and a written description of  
11 the rights and responsibilities of both the member and the  
12 governing commission and the procedures for obtaining  
13 benefits; provided, however, that such information provided by  
14 the governing commission shall not restrict or advise the  
15 member with respect to the selection of a real estate broker or  
16 agent. The information shall be delivered to the member either  
17 in person or by registered mail. A member is not eligible to  
18 file "Notice of Intent to Sell" until 5 years after the  
19 member's registration date.

20 (c) A member is required to offer the guaranteed residence  
21 for sale according to the program guidelines, including the  
22 utilization of complete and proper methods for listing  
23 residential property, listing the guaranteed residence at a  
24 price which reasonably can be expected to attract buyers, and  
25 providing reasonable access for potential buyers to see the  
26 guaranteed residence.

1 (d) A member shall ~~may~~ list the guaranteed residence in  
2 accordance with program guidelines with a real estate broker of  
3 the member's choice, for up to 90 days following the date on  
4 which the member listed the residence.

5 (e) Within 60 days of receipt of a "Notice of Intent to  
6 Sell", the governing commission shall ~~has the right to~~ have the  
7 guaranteed residence inspected by a program appraiser, at the  
8 governing commission's expense, in order to determine if the  
9 guaranteed residence is in substantially the same condition as  
10 described by the program appraisal attached to the certificate  
11 of participation. If the guaranteed residence fails to meet  
12 this standard, the following procedures shall be followed:

13 (1) The program appraiser shall determine the percentage  
14 depreciation of the guaranteed residence due to failure to  
15 maintain the premises or due to physical perils or other causes  
16 not covered by the program.

17 (2) This percentage figure shall be multiplied by the  
18 guaranteed value to determine the dollar depreciation.

19 (3) This dollar depreciation shall be subtracted from the  
20 guaranteed value to derive a lower guaranteed value to be used  
21 for the purpose of determining the amount of payment under the  
22 program.

23 (f) A member shall make the guaranteed residence available  
24 to a program appraiser within a reasonable time within this 60  
25 day period after receipt of notice from the commission that an  
26 inspection under paragraph (e) of this Section is required, or

1 the member's coverage under the program shall be null, void and  
2 of no further effect, and the member's registration fee shall  
3 be forfeited.

4 (g) Ninety days after listing the guaranteed residence, a  
5 member shall be eligible to file a "Notice of Intent to Claim"  
6 with the governing commission, in accordance with guidelines  
7 established by the governing commission, attesting to the fact  
8 that the member has followed program guidelines in offering the  
9 guaranteed residence for sale, that the member is unable to  
10 obtain an offer for purchase of the guaranteed residence for at  
11 least its guaranteed value, and that the member intends to file  
12 a claim against the program. Such notice shall include  
13 verifiable evidence of placement of the guaranteed residence on  
14 the market, the dates such placement took place, and shall list  
15 all reasonable offers to buy the property. Verifiable evidence  
16 may include a copy of advertisements for sale, a contract with  
17 a licensed real estate broker, or other evidence satisfactory  
18 to a majority of the governing commission.

19 (h) Upon receipt of the "Notice of Intent to Claim", the  
20 governing commission has 60 days during which it shall require  
21 the member to list the guaranteed residence at a price that the  
22 governing commission deems reasonable with a real estate broker  
23 of the member's choosing. The real estate broker chosen by the  
24 member shall advertise the guaranteed residence throughout the  
25 municipality which encompasses the territory of the program.

26 (i) During the 60 day period described in paragraph (h) of

1 this Section, the member shall forward to the governing  
2 commission all offers of purchase by either personal delivery  
3 or registered mail. If the member receives an offer of purchase  
4 which can reasonably be expected to be consummated if accepted  
5 and whose gross selling value is greater than the guaranteed  
6 value of the guaranteed residence, then no benefits may be  
7 claimed under the program. If the member receives an offer to  
8 purchase at a gross selling value that is less than the  
9 guaranteed value, a majority of the Commission must determine  
10 if it is a bona fide offer. If the governing commission  
11 determines the offer is not bona fide, the offer shall be  
12 deemed rejected by the governing commission. The member shall  
13 have a right to request arbitration. If the offer is deemed  
14 bona fide, the governing commission shall, within 7 ~~3~~ working  
15 days of the receipt of such offer, either:

16 (1) approve the offer, in which case the governing  
17 commission shall authorize the payment of the amount afforded  
18 under this Act upon receipt of verifiable evidence of the sale  
19 of the guaranteed residence subject to the following  
20 conditions: (i) sales involving eminent domain shall be covered  
21 as set forth in paragraph (1) of this Section; (ii) sales  
22 subsequent to an insured property and casualty loss shall be  
23 guaranteed for the guaranteed value as determined according to  
24 paragraph (e) of this Section; (iii) contract sales shall be  
25 guaranteed as determined by the guaranteed value in paragraph  
26 (e) of this Section, however proceeds payable from the program

1 shall be disbursed in equal annual installments over the life  
2 of the contract; or

3 (2) reject the offer, in which case the member shall  
4 continue showing the guaranteed residence until the  
5 termination of the 60 day period. Any offer that the  
6 governing commission deems not to be a bona fide offer shall be  
7 rejected by the governing commission.

8 Unless the member and the governing commission otherwise  
9 agree, the governing commission's failure to act upon an offer  
10 within 7 ~~3~~ working days shall be deemed to be a rejection of  
11 the offer.

12 If the member does not receive a bona fide offer within the  
13 60 day period described in subsection (h), the Commission may  
14 order an appraisal, at the governing commission expense, of the  
15 property to determine the current fair market value. If the  
16 current fair market value is below the guaranteed value, the  
17 Commission may require the member to list the guaranteed  
18 residence at the fair market value price with a real estate  
19 broker of the member's choosing. If the member does not receive  
20 a bona fide offer within 90 days thereafter, the member may  
21 further reduce the price with the consent of the Commission.  
22 Every 90 days thereafter, the member may request, and the  
23 Commission may consent to, an reduced listing price.

24 (j) No guarantee is afforded by the program unless the  
25 member has accepted a bona fide offer and the sale of the  
26 guaranteed property has closed, and until 60 days after a

1 member files a "Notice of Intent to Claim". ~~The Furthermore,~~  
2 ~~the~~ governing commission shall be required to make payments to  
3 a member only upon receipt of verifiable evidence of the actual  
4 sale of the guaranteed residence in accordance with the terms  
5 agreed upon between the member and the governing commission at  
6 the time the governing commission authorized payment. If a  
7 member rejects an offer for purchase which has been submitted  
8 to and approved by the governing commission, the governing  
9 commission or program shall not be liable for any future  
10 guarantee payment larger than that authorized for this proposed  
11 sale.

12 (k) Except as otherwise provided in this Act, payments  
13 under the program as provided in Section 7 of this Act shall  
14 not be made until the sale of the guaranteed residence has  
15 closed and title has passed or the beneficial interest has been  
16 transferred.

17 (1) When a guaranteed residence is to be acquired through  
18 the use of eminent domain by a condemning body, the following  
19 procedures shall apply:

20 (1) If the member rejects an offer from the condemning body  
21 equal to or greater than the guaranteed value, then no benefits  
22 may be claimed under the program.

23 (2) If the condemning body offers less than the guaranteed  
24 value, the governing commission may either: (i) pay 100% of the  
25 difference between the guaranteed value and the offered price  
26 if the member agrees to sell at the offered price; or (ii)

1 advise the member that the offer is inadequate and should be  
2 refused. If the member refuses the offer and the final court  
3 determination of the value of the property is less than the  
4 guaranteed value, then the program shall pay 100% of the  
5 difference between the judgment and the guaranteed value.

6 (Source: P.A. 86-684.)"; and

7 on page 76, by inserting after line 2 the following:

8 "Section 35. The Code of Civil Procedure is amended by  
9 adding Section 15-1502.5 as follows:

10 (735 ILCS 5/15-1502.5 new)

11 Sec. 15-1502.5. Homeowner protection.

12 (a) As used in this Section:

13 "Approved counseling agency" means a housing counseling  
14 agency approved by the U.S. Department of Housing and Urban  
15 Development.

16 "Approved Housing Counseling" means in-person counseling  
17 provided by a counselor employed by an approved counseling  
18 agency to all borrowers, or documented telephone counseling  
19 where a hardship would be imposed on one or more borrowers. A  
20 hardship shall exist in instances in which the borrower is  
21 confined to his or her home due to medical conditions, as  
22 verified in writing by a physician or the borrower resides 50  
23 miles or more from the nearest approved counseling agency. In

1 instances of telephone counseling, the borrower must supply all  
2 necessary documents to the counselor at least 72 hours prior to  
3 the scheduled telephone counseling session.

4 "Delinquent" means past due with respect to a payment on a  
5 mortgage secured by residential real estate.

6 "Department" means the Department of Financial and  
7 Professional Regulation.

8 "Secretary" means the Secretary of Financial and  
9 Professional Regulation or other person authorized to act in  
10 the Secretary's stead.

11 "Sustainable loan workout plan" means a plan that the  
12 mortgagor and approved counseling agency believe shall enable  
13 the mortgagor to stay current on his or her mortgage payments  
14 for the foreseeable future when taking into account the  
15 mortgagor income and existing and foreseeable debts. A  
16 sustainable loan workout plan may include, but is not limited  
17 to, (1) a temporary suspension of payments, (2) a lengthened  
18 loan term, (3) a lowered or frozen interest rate, (4) a  
19 principal write down, (5) a repayment plan to pay the existing  
20 loan in full, (6) deferred payments, or (7) refinancing into a  
21 new affordable loan.

22 (b) Except in the circumstance in which a mortgagor has  
23 filed a petition for relief under the United States Bankruptcy  
24 Code, no mortgagee shall file a complaint to foreclose a  
25 mortgage secured by residential real estate until the  
26 requirements of this Section have been satisfied.

1       (c) Notwithstanding any other provision to the contrary,  
2 with respect to a particular mortgage secured by residential  
3 real estate, the procedures and forbearances described in this  
4 Section apply only once per subject mortgage.

5       Except for mortgages secured by residential real estate in  
6 which any mortgagor has filed for relief under the United  
7 States Bankruptcy Code, if a mortgage secured by residential  
8 real estate becomes delinquent by more than 30 days the  
9 mortgagee shall send via U.S. mail a notice advising the  
10 mortgagor that he or she may wish to seek approved housing  
11 counseling. Notwithstanding anything to the contrary in this  
12 Section, nothing shall preclude the mortgagor and mortgagee  
13 from communicating with each other during the initial 30 days  
14 of delinquency or reaching agreement on a sustainable loan  
15 workout plan, or both.

16       No foreclosure action under Part 15 of Article XV of the  
17 Code of Civil Procedure shall be instituted on a mortgage  
18 secured by residential real estate before mailing the notice  
19 described in this subsection (c).

20       The notice required in this subsection (c) shall state the  
21 date on which the notice was mailed, shall be headed in bold  
22 14-point type "GRACE PERIOD NOTICE", and shall state the  
23 following in 14-point type: "YOUR LOAN IS MORE THAN 30 DAYS  
24 PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY  
25 BE IN YOUR BEST INTEREST TO SEEK APPROVED HOUSING COUNSELING.  
26 YOU HAVE A GRACE PERIOD OF 30 DAYS FROM THE DATE OF THIS NOTICE

1 TO OBTAIN APPROVED HOUSING COUNSELING. DURING THE GRACE PERIOD,  
2 THE LAW PROHIBITS US FROM TAKING ANY LEGAL ACTION AGAINST YOU.  
3 YOU MAY BE ENTITLED TO AN ADDITIONAL 30 DAY GRACE PERIOD IF YOU  
4 OBTAIN HOUSING COUNSELING FROM AN APPROVED HOUSING COUNSELING  
5 AGENCY. A LIST OF APPROVED COUNSELING AGENCIES MAY BE OBTAINED  
6 FROM THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL  
7 REGULATION."

8 The notice shall also list the Department's current  
9 consumer hotline, the Department's website, and the telephone  
10 number, fax number, and mailing address of the mortgagee. No  
11 language, other than language substantially similar to the  
12 language prescribed in this subsection (c), shall be included  
13 in the notice. Notwithstanding any other provision to the  
14 contrary, the grace period notice required by this subsection  
15 (c) may be combined with a counseling notification required  
16 under federal law.

17 The sending of the notice required under this subsection  
18 (c) means depositing or causing to be deposited into the United  
19 States mail an envelope with first-class postage prepaid that  
20 contains the document to be delivered. The envelope shall be  
21 addressed to the mortgagor at the common address of the  
22 residential real estate securing the mortgage.

23 (d) Until 30 days after mailing the notice provided for  
24 under subsection (c) of this Section, no legal action shall be  
25 instituted under Part 15 of Article XV of the Code of Civil  
26 Procedure.

1       (e) If, within the 30-day period provided under subsection  
2 (d) of this Section, an approved counseling agency provides  
3 written notice to the mortgagee that the mortgagor is seeking  
4 approved counseling services, then no legal action under Part  
5 15 of Article XV of the Code of Civil Procedure shall be  
6 instituted for 30 days after the date of that notice. The date  
7 that such notice is sent shall be stated in the notice, and  
8 shall be sent to the address or fax number contained in the  
9 Grace Period Notice required under subsection (c) of this  
10 Section. During the 30-day period provided under this  
11 subsection (e), the mortgagor or counselor or both may prepare  
12 and proffer to the mortgagee a proposed sustainable loan  
13 workout plan. The mortgagee will then determine whether to  
14 accept the proposed sustainable loan workout plan. If the  
15 mortgagee and the mortgagor agree to a sustainable loan workout  
16 plan, then no legal action under Part 15 of Article XV of the  
17 Code of Civil Procedure shall be instituted for as long as the  
18 sustainable loan workout plan is complied with by the  
19 mortgagor.

20       The agreed sustainable loan workout plan and any  
21 modifications thereto must be in writing and signed by the  
22 mortgagee and the mortgagor.

23       Upon written notice to the mortgagee, the mortgagor may  
24 change approved counseling agencies, but such a change does not  
25 entitle the mortgagor to any additional period of forbearance.

26       (f) If the mortgagor fails to comply with the sustainable

1 loan workout plan, then nothing in this Section shall be  
2 construed to impair the legal rights of the mortgagee to  
3 enforce the contract.

4 (g) A counselor employed by a housing counseling agency or  
5 the housing counseling agency that in good faith provides  
6 counseling shall not be liable to a mortgagee or mortgagor for  
7 civil damages, except for willful or wanton misconduct on the  
8 part of the counselor in providing the counseling.

9 (h) There shall be no waiver of any provision of this  
10 Section.

11 (i) It is the General Assembly's intent that compliance  
12 with this Section shall not prejudice a mortgagee in ratings of  
13 its bad debt collection or calculation standards or policies.

14 (j) This Section shall not apply, or shall cease to apply,  
15 to residential real estate that is not occupied as a principal  
16 residence by the mortgagor.

17 (k) This Section is repealed 2 years after the effective  
18 date of this amendatory Act of the 95th General Assembly.

19 Section 40. The Mortgage Rescue Fraud Act is amended by  
20 changing Sections 5 and 50 and by adding Sections 7 and 70 as  
21 follows:

22 (765 ILCS 940/5)

23 Sec. 5. Definitions. As used in this Act:

24 "Distressed property" means residential real property

1 consisting of one to 6 family dwelling units that is in  
2 foreclosure or at risk of loss due to nonpayment of taxes, or  
3 whose owner is more than 30 ~~90~~ days delinquent on any loan that  
4 is secured by the property.

5 "Distressed property consultant" means any person who,  
6 directly or indirectly, for compensation from the owner, makes  
7 any solicitation, representation, or offer to perform or who,  
8 for compensation from the owner, performs any service that the  
9 person represents will in any manner do any of the following:

10 (1) stop or postpone the foreclosure sale or stop or  
11 postpone the loss of the home due to nonpayment of taxes;

12 (2) obtain any forbearance from any beneficiary or  
13 mortgagee, or relief with respect to a tax sale of the  
14 property;

15 (3) assist the owner to exercise any right of  
16 reinstatement or right of redemption;

17 (4) obtain any extension of the period within which the  
18 owner may reinstate the owner's rights with respect to the  
19 property;

20 (5) obtain any waiver of an acceleration clause  
21 contained in any promissory note or contract secured by a  
22 mortgage on a distressed property or contained in the  
23 mortgage;

24 (6) assist the owner in foreclosure, loan default, or  
25 post-tax sale redemption period to obtain a loan or advance  
26 of funds;

1           (7) avoid or ameliorate the impairment of the owner's  
2 credit resulting from the recording of a notice of default  
3 or the conduct of a foreclosure sale or tax sale; or

4           (8) save the owner's residence from foreclosure or save  
5 the owner from loss of home due to nonpayment of taxes.

6           A "distressed property consultant" does not include any of  
7 the following:

8           (1) a person or the person's authorized agent acting  
9 under the express authority or written approval of the  
10 Department of Housing and Urban Development;

11           (2) a person who holds or is owed an obligation secured  
12 by a lien on any distressed property, or a person acting  
13 under the express authorization or written approval of such  
14 person, when the person performs services in connection  
15 with the obligation or lien, if the obligation or lien did  
16 not arise as the result of or as part of a proposed  
17 distressed property conveyance;

18           (3) banks, savings banks, savings and loan  
19 associations, credit unions, and insurance companies  
20 organized, chartered, or holding a certificate of  
21 authority to do business under the laws of this State or  
22 any other state or under the laws of the United States;

23           (4) ~~licensed~~ attorneys licensed in Illinois engaged in  
24 the practice of law;

25           (5) a Department of Housing and Urban Development  
26 approved mortgagee and any subsidiary or affiliate of these

1 persons or entities, and any agent or employee of these  
2 persons or entities, while engaged in the business of these  
3 persons or entities;

4 (6) a 501(c)(3) nonprofit agency or organization,  
5 doing business for no less than 5 years, that offers  
6 counseling or advice to an owner of a distressed property,  
7 if they do not contract for services with for-profit  
8 lenders or distressed property purchasers, or any person  
9 who structures or plans such a transaction;

10 (7) (blank) ~~licensees of the Residential Mortgage~~  
11 ~~License Act of 1987;~~

12 (8) licensees of the Consumer Installment Loan Act who  
13 are authorized to make loans secured by real property; or

14 (9) licensees of the Real Estate License Act of 2000  
15 when providing licensed activities.

16 "Distressed property purchaser" means any person who  
17 acquires any interest in fee in a distressed property or a  
18 beneficial interest in a trust holding title to a distressed  
19 property while allowing the owner to possess, occupy, or retain  
20 any present or future interest in fee in the property, or any  
21 person who participates in a joint venture or joint enterprise  
22 involving a distressed property conveyance. "Distressed  
23 property purchaser" does not mean any person who acquires  
24 distressed property at a short sale or any person acting in  
25 participation with any person who acquires distressed property  
26 at a short sale, if that person does not promise to convey an

1 interest in fee back to the owner or does not give the owner an  
2 option to purchase the property at a later date.

3 "Distressed property conveyance" means a transaction in  
4 which an owner of a distressed property transfers an interest  
5 in fee in the distressed property or in which the holder of all  
6 or some part of the beneficial interest in a trust holding  
7 title to a distressed property transfers that interest; the  
8 acquirer of the property allows the owner of the distressed  
9 property to occupy the property; and the acquirer of the  
10 property or a person acting in participation with the acquirer  
11 of the property conveys or promises to convey an interest in  
12 fee back to the owner or gives the owner an option to purchase  
13 the property at a later date.

14 "Person" means any individual, partnership, corporation,  
15 limited liability company, association, or other group or  
16 entity, however organized.

17 "Service" means, without limitation, any of the following:

18 (1) debt, budget, or financial counseling of any type;

19 (2) receiving money for the purpose of distributing it  
20 to creditors in payment or partial payment of any  
21 obligation secured by a lien on a distressed property;

22 (3) contacting creditors on behalf of an owner of a  
23 residence that is distressed property;

24 (4) arranging or attempting to arrange for an extension  
25 of the period within which the owner of a distressed  
26 property may cure the owner's default and reinstate his or

1 her obligation;

2 (5) arranging or attempting to arrange for any delay or  
3 postponement of the time of sale of the distressed  
4 property;

5 (6) advising the filing of any document or assisting in  
6 any manner in the preparation of any document for filing  
7 with any court; or

8 (7) giving any advice, explanation, or instruction to  
9 an owner of a distressed property that in any manner  
10 relates to the cure of a default or forfeiture or to the  
11 postponement or avoidance of sale of the distressed  
12 property.

13 (Source: P.A. 94-822, eff. 1-1-07; 95-691, eff. 6-1-08.)

14 (765 ILCS 940/7 new)

15 Sec. 7. Residential Mortgage License Act of 1987 licensees.  
16 Licensees of the Residential Mortgage License Act of 1987 are  
17 exempt from the requirements of Sections 10, 15, 20, 50(a)(4),  
18 50(a)(5), 50(a)(6), and 50(a)(7). Licensees are also exempt  
19 from the requirements of Section 50(a)(2) and Section 70 for  
20 any transaction resulting in the origination of a new mortgage  
21 loan extinguishing the existing mortgage loan.

22 (765 ILCS 940/50)

23 Sec. 50. Violations.

24 (a) It is a violation for a distressed property consultant

1 to:

2 (1) claim, demand, charge, collect, or receive any  
3 compensation until after the distressed property  
4 consultant has fully performed each service the distressed  
5 property consultant contracted to perform or represented  
6 he or she would perform;

7 (2) claim, demand, charge, collect, or receive any fee,  
8 interest, or any other compensation ~~for any reason that~~  
9 does not comport with Section 70 ~~exceeds 2 monthly mortgage~~  
10 ~~payments of principal and interest or the most recent tax~~  
11 ~~installment on the distressed property, whichever is less;~~

12 (3) take a wage assignment, a lien of any type on real  
13 or personal property, or other security to secure the  
14 payment of compensation. Any such security is void and  
15 unenforceable;

16 (4) receive any consideration from any third party in  
17 connection with services rendered to an owner unless the  
18 consideration is first fully disclosed to the owner;

19 (5) acquire any interest, directly or indirectly, or by  
20 means of a subsidiary or affiliate in a distressed property  
21 from an owner with whom the distressed property consultant  
22 has contracted;

23 (6) take any power of attorney from an owner for any  
24 purpose, except to inspect documents as provided by law; or

25 (7) induce or attempt to induce an owner to enter a  
26 contract that does not comply in all respects with Sections

1 10 and 15 of this Act.

2 (b) A distressed property purchaser, in the course of a  
3 distressed property conveyance, shall not:

4 (1) enter into, or attempt to enter into, a distressed  
5 property conveyance unless the distressed property  
6 purchaser verifies and can demonstrate that the owner of  
7 the distressed property has a reasonable ability to pay for  
8 the subsequent conveyance of an interest back to the owner  
9 of the distressed property and to make monthly or any other  
10 required payments due prior to that time;

11 (2) fail to make a payment to the owner of the  
12 distressed property at the time the title is conveyed so  
13 that the owner of the distressed property has received  
14 consideration in an amount of at least 82% of the  
15 property's fair market value, or, in the alternative, fail  
16 to pay the owner of the distressed property no more than  
17 the costs necessary to extinguish all of the existing  
18 obligations on the distressed property, as set forth in  
19 subdivision (b)(10) of Section 45, provided that the  
20 owner's costs to repurchase the distressed property  
21 pursuant to the terms of the distressed property conveyance  
22 contract do not exceed 125% of the distressed property  
23 purchaser's costs to purchase the property. If an owner is  
24 unable to repurchase the property pursuant to the terms of  
25 the distressed property conveyance contract, the  
26 distressed property purchaser shall not fail to make a

1 payment to the owner of the distressed property so that the  
2 owner of the distressed property has received  
3 consideration in an amount of at least 82% of the  
4 property's fair market value at the time of conveyance or  
5 at the expiration of the owner's option to repurchase.

6 (3) enter into repurchase or lease terms as part of the  
7 subsequent conveyance that are unfair or commercially  
8 unreasonable, or engage in any other unfair conduct;

9 (4) represent, directly or indirectly, that the  
10 distressed property purchaser is acting as an advisor or a  
11 consultant, or in any other manner represent that the  
12 distressed property purchaser is acting on behalf of the  
13 homeowner, or the distressed property purchaser is  
14 assisting the owner of the distressed property to "save the  
15 house", "buy time", or do anything couched in substantially  
16 similar language;

17 (5) misrepresent the distressed property purchaser's  
18 status as to licensure or certification;

19 (6) do any of the following until after the time during  
20 which the owner of a distressed property may cancel the  
21 transaction:

22 (A) accept from the owner of the distressed  
23 property an execution of any instrument of conveyance  
24 of any interest in the distressed property;

25 (B) induce the owner of the distressed property to  
26 execute an instrument of conveyance of any interest in

1 the distressed property; or

2 (C) record with the county recorder of deeds any  
3 document signed by the owner of the distressed  
4 property, including but not limited to any instrument  
5 of conveyance;

6 (7) fail to reconvey title to the distressed property  
7 when the terms of the conveyance contract have been  
8 fulfilled;

9 (8) induce the owner of the distressed property to  
10 execute a quit claim deed when entering into a distressed  
11 property conveyance;

12 (9) enter into a distressed property conveyance where  
13 any party to the transaction is represented by power of  
14 attorney;

15 (10) fail to extinguish all liens encumbering the  
16 distressed property, immediately following the conveyance  
17 of the distressed property, or fail to assume all liability  
18 with respect to the lien in foreclosure and prior liens  
19 that will not be extinguished by such foreclosure, which  
20 assumption shall be accomplished without violations of the  
21 terms and conditions of the lien being assumed. Nothing  
22 herein shall preclude a lender from enforcing any provision  
23 in a contract that is not otherwise prohibited by law;

24 (11) fail to complete a distressed property conveyance  
25 before a notary in the offices of a title company licensed  
26 by the Department of Financial and Professional

1 Regulation, before an agent of such a title company, a  
2 notary in the office of a bank, or a licensed attorney  
3 where the notary is employed; or

4 (12) cause the property to be conveyed or encumbered  
5 without the knowledge or permission of the distressed  
6 property owner, or in any way frustrate the ability of the  
7 distressed property owner to complete the conveyance back  
8 to the distressed property owner.

9 (c) There is a rebuttable presumption that an appraisal by  
10 a person licensed or certified by an agency of this State or  
11 the federal government is an accurate determination of the fair  
12 market value of the property.

13 (d) "Consideration" in item (2) of subsection (b) means any  
14 payment or thing of value provided to the owner of the  
15 distressed property, including reasonable costs paid to  
16 independent third parties necessary to complete the distressed  
17 property conveyance or payment of money to satisfy a debt or  
18 legal obligation of the owner of the distressed property.

19 "Consideration" shall not include amounts imputed as a  
20 downpayment or fee to the distressed property purchaser, or a  
21 person acting in participation with the distressed property  
22 purchaser.

23 (e) An evaluation of "reasonable ability to pay" under  
24 subsection (b)(1) of this Section 50 shall include debt to  
25 income ratio, fair market value of the distressed property, and  
26 the distressed property owner's payment history. There is a

1     rebuttable presumption that the distressed property purchaser  
2     has not verified reasonable payment ability if the distressed  
3     property purchaser has not obtained documents of assets,  
4     liabilities, and income, other than a statement by the owner of  
5     the distressed property.

6     (Source: P.A. 94-822, eff. 1-1-07.)

7             (765 ILCS 940/70 new)

8             Sec. 70. Distressed property consultant compensation. In  
9             transactions that reduce the existing payment on a homeowner's  
10            mortgage loan for a period of no less than 5 years, a  
11            distressed property consultant shall not claim, demand,  
12            charge, collect, or receive any fee, interest, or any other  
13            compensation that exceeds the lesser of the homeowner's:

14            (1) existing monthly principal and interest mortgage  
15            payment; or

16            (2) total net savings derived from the lowered monthly  
17            principal and interest mortgage payment over the  
18            succeeding 12 months.

19            For all other transactions, a distressed property  
20            consultant shall not claim, demand, charge, collect, or receive  
21            any fee, interest, or any other compensation for any reason  
22            that exceeds 50% of the owner's existing monthly principal and  
23            interest mortgage payments.

24            Section 97. Severability. The provisions of this Act are

1 severable under Section 1.31 of the Statute on Statutes."